

FOR THE EASTERN DISTRICT OF PENNSYLVANIA - DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 2147 S Delaware Avenue, Philadelphia, PA 19146
 Address of Defendant: 2400 Newtown Pike, P.O. Box 13610, Lexington, KY 40583
210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21204
 Place of Accident, Incident or Transaction: Eastern District of Pennsylvania
 (Use Reverse Side For Additional Space)

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☐

RELATED CASE, IF ANY:

Case Number: 00-CV-6370 Judge Hon. Edmund V. Ludwiga Terminated: August 23, 2001

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☒ No ☐
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☒ No ☐
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☐

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability - Asbestos
9. ☐ All other Diversity Cases
(Please specify) **Personal Property**

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, MICHAEL S. HINO, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(e)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 6/25/02

[Signature]
Attorney-at-Law

62406
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: _____

Attorney-at-Law

Attorney I.D.#

CIV. 609 (9/99)

TOTAL P.02

JS 44

(Rev. 07/88)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

J.H. STEVEDORING CO. and
PENN WAREHOUSING AND DISTRIBUTION, INC.

DEFENDANTS

FASIG-TIPTON COMPANY, INC. and
FASIG-TIPTON MIDLANTIC, INC.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

MICHAEL S. HINO, ESQUIRE
HEATHER A. HOYT, ESQUIRE
Pepper Hamilton LLP
400 Berwyn Park, 899 Cassatt Road
Berwyn, PA 19312-1183

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY

28 U.S.C. §1332(a); 28 U.S.C. §1391(a)

V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Educ. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 180 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Uter & Strainer <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Legislation <input type="checkbox"/> 791 Emp't. Ret. Inv. Security Act	<input type="checkbox"/> 422 Adm'n. 28 USC 156 <input type="checkbox"/> 423 Withdrawal 28 USC 137 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyright <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 SSA (1995) <input type="checkbox"/> 862 Social Security (1995) <input type="checkbox"/> 863 DIWC/DIWH (409(a)) <input type="checkbox"/> 864 SSI Title XVI <input type="checkbox"/> 865 PSI (405(a)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7806	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Animals <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/KCC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Recreational Influenced and Certain Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 2410 <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 896 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Small Access to Justice <input type="checkbox"/> 950 Continuity of State Business <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Easement <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 610 Motions to Vacate Sentence <input type="checkbox"/> 620 Habeas Corpus: General <input type="checkbox"/> 630 Death Penalty <input type="checkbox"/> 640 Mandamus & Other <input type="checkbox"/> 650 Other		

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

☒ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

Transferred from
☐ 5 another district (specify)

☐ 6 Multidistrict Litigation

Appeal to District
☐ 7 Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint

JURY DEMAND: ☐ YES ☐ NO**VIII. RELATED CASE(S) IF ANY**

(See instructions):

Honorable Edmund V. Ludwig
JUDGE

DOCKET NUMBER 00-CV-6370

DATE

6/24/02

SIGNATURE OF ATTORNEY OF RECORD



**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

J.H. STEVEDORING CO. and
PENN WAREHOUSING AND DISTRIBUTION,
INC.

CIVIL ACTION

v.
FASIG TIPTON COMPANY, INC.
and FASIG TIPTON MIDLANTIC, INC.

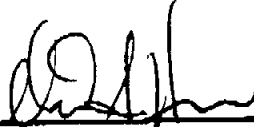
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus -- Cases brought under 28 U.S.C. §2441 through §2255. ()
- (b) Social Security -- Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration -- Cases required to be designated for arbitration under Local Civil Rule 8. ()
- (d) Asbestos -- Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management -- Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management -- Cases that do not fall into any one of the other tracks. (X)

6/27/02
(Date)


Attorney-at-law
Attorney for Penn Warehousing & Distribution, Inc.
and J.H. Stevedoring Co., Inc.
Attorney for

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

J.H. STEVEDORING CO.
2147 S. Delaware Avenue
Philadelphia, PA 19146
and
PENN WAREHOUSING AND
DISTRIBUTION, INC.
2147 S. Delaware Avenue
Philadelphia, PA 19146

Plaintiffs,

v.

FASIG-TIPTON COMPANY, INC.
2400 Newtown Pike
P.O. Box 13610
Lexington, KY 40583
and
FASIG-TIPTON MIDLANTIC, INC.
210 Allegheny Avenue
P.O. Box 5517
Towson, MD 21204

Defendants.

CIVIL ACTION

NO. 02cv4040

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs, J.H. Stevedoring Co. ("J.H.") and Penn Warehousing and Distribution, Inc. ("Penn"; where no distinction is necessary, J.H. and Penn are collectively referred to as "Plaintiffs"), by and through their attorneys, Pepper Hamilton LLP, bring this Complaint against defendants Fasig-Tipton Company, Inc. and Fasig-Tipton Midlantic, Inc. (collectively referred to as "Fasig"). In support thereof, Plaintiffs allege the following:

THE PARTIES

1. Plaintiff J.H. is a corporation organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 2147 S. Delaware Avenue, Philadelphia, PA 19146.

2. Plaintiff Penn is a corporation organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 2147 S. Delaware Avenue, Philadelphia, PA 19146.

3. Defendant Fasig-Tipton Company, Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business at 2400 Newtown Pike, Lexington, KY 40583.

4. Defendant Fasig-Tipton Midlantic, Inc. is a corporation organized under the laws of the State of Maryland with its principal place of business at 356 Fair Hill Drive, Suite C, Elkton, MD 21921.

JURISDICTION AND VENUE

5. This Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. §1332(a), as the parties are citizens of different states and the amount in controversy exceeds the sum of \$100,000.

6. Venue is proper in this district pursuant to 28 U.S.C. §1391(a), as the Plaintiffs are residents of this judicial district, a substantial part of the events giving rise to the claim occurred within this judicial district and defendant is subject to jurisdiction in this district.

FACTUAL BACKGROUND

7. J.H. is a stevedoring operator which unloads ships at certain pier facilities in the Port of Philadelphia.

8. Penn operates public warehouse facilities in the Port of Philadelphia.

9. From approximately 1985 through December 1998, Dennis Bishop ("Bishop") was an employee of Penn. During this time, he held various positions at Penn and J.H.

10. From April 1997 through approximately April 2000, Bishop was an accounting consultant to both J.H. and Penn.

11. Upon information and belief, in or about 1994, Bishop began purchasing horses that were auctioned by Fasig at its Midlantic facility in Elkton, Maryland.

12. The first of the approximately 17 to 20 horses that were purchased by Bishop from 1997 to 2000 was bought with a check drawn from Bishop's personal account.

13. Many of the remaining horses, however, were purchased at auctions run by Fasig with checks that were unlawfully and without authorization drawn from the accounts of Penn and J.H. The horses were purchased by Bishop for himself and/or Danielle Bishop Stables, Inc. ("Danielle"), an entity owned and operated by Bishop.

14. In violation of its duties and obligations, Fasig accepted the funds of Penn and J.H. for the benefit of Bishop, Danielle and itself.

15. Despite receiving and depositing checks drawn from the accounts of Penn and/or J.H., Fasig failed to make any inquiry or investigation into whether Bishop was authorized to use the funds of Penn and/or J.H.

16. Fasig benefited from each of the transactions of Bishop and Danielle in that it received an entry fee ranging from \$200-\$500 on each horse, as well as a 5% commission on each horse sold.

17. As a direct and proximate result of Fasig's unlawful conduct, Penn and J.H. lost in excess of \$370,632.

COUNT I
CONVERSION

18. Penn and J.H. incorporate by reference paragraphs 1 through 17 above, as if fully set forth herein.

19. Fasig improperly and unlawfully accepted, and benefited from, funds drawn from the accounts of J.H. and Penn.

20. Despite demand by Penn and J.H., Fasig has failed to return and/or repay the converted funds.

21. By refusing to return and/or repay these funds, Fasig-Tipton has exercised unlawful dominion and control over the property of Penn and J.H.

22. As a direct and proximate result of the unlawful conduct of Fasig-Tipton, Penn and J.H. have sustained damages in an amount in excess of \$370,632.

WHEREFORE, plaintiffs, J.H. Stevedoring Co. and Penn Warehousing and Distribution, Inc., respectfully request judgment against defendants, Fasig-Tipton Company, Inc. and Fasig-Tipton Midlantic, Inc. in an amount in excess of \$370,632, together with costs and interest, and any other relief the Court deems appropriate.

COUNT II
UNJUST ENRICHMENT

23. Penn and J.H. incorporate by reference paragraphs 1 through 22 above, as if fully set forth herein.

24. Fasig unlawfully obtained the funds of Penn and J.H., and despite demand by Penn and J.H., has retained and refused to return same, thereby unjustly enriching itself.

25. Fasig did not provide any goods or services to Penn and J.H. and therefore it has been unjustly enriched at the expense of Penn and J.H.

26. As a direct and proximate result of the unjust enrichment of Fasig, Penn and J.H. have suffered damages in excess of \$370,632, including consequential and incidental damages.

WHEREFORE, plaintiffs, J.H. Stevedoring Co. and Penn Warehousing and Distribution, Inc., respectfully request judgment against defendants, Fasig-Tipton Company, Inc. and Fasig-Tipton Midlantic, Inc. in an amount in excess of \$370,632, together with costs and interest, and any other relief the Court deems appropriate.

COUNT III
NEGLIGENCE

27. Penn and J.H. incorporate by reference paragraphs 1 through 26 above, as if fully set forth herein.

28. Fasig owned Penn and J.H. a duty of care to properly handle funds drawn from the accounts of Penn and J.H.

29. Fasig breached its duty of care by acting negligently, carelessly and recklessly in accepting funds payable to the account of Bishop and Danielle that were drawn from the accounts of Penn and J.H.

30. Fasig, had an obligation to, among other things, examine the checks and make an inquiry to Penn and J.H. as to whether the funds were properly deposited with, and used by Fasig.

31. As a direct and proximate result of Fasig's negligence, carelessness and recklessness, Penn and J.H. have suffered damages in excess of \$370,632, including consequential and incidental damages.

WHEREFORE, plaintiffs, J.H. Stevedoring Co. and Penn Warehousing and Distribution, Inc., respectfully request judgment against defendants, Fasig-Tipton Company, Inc.

and Fasig-Tipton Midlantic, Inc. in an amount in excess of \$370,632, together with costs and interest, and any other relief the Court deems appropriate.



MICHAEL S. HINO
Attorney I.D. No. 62406
HEATHER A. HOYT
Attorney I.D. No. 81105
Pepper Hamilton LLP
400 Berwyn Park
899 Cassatt Road
Berwyn, PA 19312-1183
(610) 640-7800

Attorneys for Plaintiffs
J.H. STEVEDORING CO. and
PENN WAREHOUSING AND
DISTRIBUTION, INC.

Dated: June 24, 2002